



C.M.A.No.2302 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.10.2023

CORAM :

THE HONOURABLE MR. JUSTICE **M. DHANDAPANI**

C.M.A.No.2302 of 2013

Mohan

...Appellant

Vs.

1. Parveen

2. The Divisional Manager,
The New India Assurance Company Limited,
No.42, Big Street,
Thiruvannamalai.

...Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgement and Decree dated 03.09.2009 made in M.A.C.T.O.P.No.1015 of 2006 on the file of the Motor Accident Claims Tribunal and Additional Sub Judge, Tiruvannamalai.

For Appellant : Ms.A.Subadra
for Ms.M.Malar

For Respondents : R-1 set Exparte
: Mr.P.Kandasamy for R2



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JUDGEMENT

Aggrieved by the Judgement and Decree dated 03.09.2009 made in M.A.C.T.O.P.No.1015 of 2006 on the file of the Motor Accident Claims Tribunal and Additional Sub Judge, Tiruvanamalai, the appellant has come up with this Appeal

2. The case of the appellant is that, on 11.05.2006 at about 08.30 pm., when the appellant was riding the motor cycle bearing Regn.No.TN-04-X-6736 in the 100 Feet Road near 18th Main Road Junction, along with his friend, at that time, the driver of the Container lorry bearing Regn.No.TN-04-M-4701, owned by the 1st respondent and insured with the 2nd respondent, drove the vehicle in a rash and negligent manner and dashed as against the appellant's vehicle, as a result of which, the appellant sustained grievous injuries all over his body and was admitted in the hospital. Thereafter, the appellant filed a petition under Section 166 of the Motor Vehicles Act, 1988 (in short 'MV Act'), claiming a compensation of Rs.5,00,000/-. After contest, the tribunal, vide impugned judgment dated 03.09.2009 awarded a compensation of



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Rs.1,18,028/- and fixed 25% contributory negligence on the part of the appellant. Aggrieved with the said order, the present appeal has been filed by the claimant seeking enhancement as also questioning the negligence fixed on the part of the appellant.

3. Learned counsel appearing for the appellant submitted that, due to the said accident, though the appellant suffered permanent disability and is unable to continue his avocation as before the accident, however, without properly considering the same, the Tribunal had awarded a meager compensation of Rs.1,18,028/- alone, even in which, a deduction of 25% was made on the ground that the appellant was under the influence of alcohol at the time of accident, which is not sustainable and the compensation awarded under each head should necessarily be interfered with. Even if it is accepted without admitting that the appellant had consumed alcohol during day time, the above said accident had happened during the night time and only when the alcohol consumption is above 30 gms, it should be considered that the person is under the influence of alcohol, however, no proper test was taken to verify the same. Further, by merely relying upon the Wound Certificate marked as



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Ex.P4, in which it is stated that “*alleged H/O RTA while travelling in his two wheeler hit against a lorry under the influence of alcohol*”, the Tribunal had arrived at a conclusion that the appellant had also contributed to the accident by consuming alcohol and fixed 25% contributory negligence on the part of the appellant, which is *per se* illegal. Accordingly, he prayed for appropriate orders.

4. Learned counsel appearing for the 2nd respondent submitted that, after carefully considering all the relevant documents placed before it particularly the Ex.P4, Wound certificate, in which it is specifically stated that the appellant was under the influence of alcohol, the Tribunal has rightly awarded a compensation of Rs.1,18,028/- and fixed 25% negligence on the part of the appellant, which is perfectly in order and the same does not require any enhancement. Accordingly, he prays for dismissal of the appeal.

5. Heard learned counsel on either side and perused the material documents placed on record.



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6. On the question of contributory negligence, it is evident from Ex.P-4, the wound certificate, the doctor had clearly opined that the appellant was under the influence of alcohol. Though it is the contention of the appellant that he had consumed alcohol during the day and the accident had happened during the night, however, no contra evidence to Ex.P-4, in the form of oral testimony of the doctor to suggest that the alcohol in the blood of the appellant would not have had significant impact in the physical capabilities of the appellant so as to contribute for the accident, had been adduced by the appellant. In the absence of any contra evidence, necessarily, the Tribunal, acting on Ex.P-4 had come to the conclusion that the appellant had also contributed to the accident in the form of consuming alcohol, which finding is based on materials available on record and, accordingly, the same does not warrant interference.

7. Insofar as the compensation awarded under the other heads are concerned, though the appellant claims that the said amounts are meagre, however, a perusal of the compensation awarded shows that for awarding the compensation, the Tribunal has given clear reasoning and the said



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reasoning are based on relevant materials and this Court feels that fair and just compensation has been awarded and no enhancement is required.

8. Accordingly, this Civil Miscellaneous Appeal stands dismissed and the judgment and decree dated 03.09.2009 made in M.A.C.T.O.P.No.1015 of 2006 is confirmed. No costs.

04.10.2023

skt

Index : Yes / No
Speaking order : Yes / No
NCC : Yes / No

To

- 1.The Motor Accident Claims Tribunal and Additional Sub Judge,
Tiruvanamalai.
- 2.The Section Officer,
V.R.Section, High Court, Madras.



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M.DHANDAPANI, J.

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